

REMARKS/ARGUMENTS

Claims 1-39 remain in this application. The Office has identified two patentably distinct inventions as indicated below:

Invention 1: Methods and compositions comprising calcium 3-hydroxy-3-methylbutyrate.

Invention 2: Methods and compositions comprising magnesium 3-hydroxy-3-methylbutyrate.

Furthermore, the Office is requiring applicant to describe a single species of condition to be treated within the list of conditions set forth in claim 16. Applicants elect to prosecute Invention 1 set forth above corresponding to claims 1-6, 12-20, 26-33 and 37-39. Furthermore, applicants elect hypocalcemia as a single species of condition to be treated. Applicants traverse the requirement to elect an invention and a single condition to be treated for the following reasons.

Applicants submit that the election requirement is improper because the search and examination of all of the claims now pending can be made without serious burden. In accordance with MPEP §803.02, practice re: Markush-type claims,

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the Examiner must examine all the members of the Markush group, in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require a restriction.

MPEP §803.02, emphasis added.

Even assuming for the sake of argument that the identified inventions are independent and distinct, applicants respectfully submit that the cited passage from the MPEP directly applies since there are only two members of the group. Furthermore, the members are so closely related that the prior art developed with respect to one of the inventions would likely be relevant to both of the inventions. Therefore, applicants

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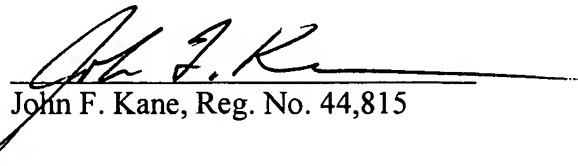
Attorney Docket No. 632898-041

Amendment

respectfully submit that the restriction requirement is improper and requests that the requirement for restriction be withdrawn.

Reconsideration and withdraw of the restriction requirement is respectfully requested. If the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone indicated below.

Respectfully submitted,



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